

ENTERED

October 21, 2015

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

J L COX,

Plaintiff,

VS.

WILLIAM STEPHENS, *et al*,

Defendants.

§
§
§
§
§
§
§

CIVIL ACTION NO. 2:13-CV-00151

**AMENDED ORDER¹ ADOPTING MEMORANDUM AND
RECOMMENDATION TO DENY PLAINTIFF'S APPLICATION
TO PROCEED IN FORMA PAUPERIS ON APPEAL**

Pending before the Court is Plaintiff's Application to Proceed *In Forma Pauperis* (IFP) with respect to his appeal. (D.E. 65). On September 9, 2015, United States Magistrate Judge Jason B. Libby issued a Memorandum and Recommendation to Deny Plaintiff's Application to Proceed IFP on Appeal. (D.E. 67). Plaintiff filed his Objections (D.E. 68) on September 24, 2015.

Plaintiff simply suggests that he has demonstrated good cause or excusable neglect regarding his application because his jailhouse lawyer was unable to timely prosecute his appeal, including his application, because he was placed in solitary confinement for two months, followed by an institutional lockdown of his unit for another month. Plaintiff does not demonstrate why he did not or could not timely proceed on his own or with help from another individual. Neither does Plaintiff attempt to show any exception to the

¹The original order did not include a filing fee assessment as required by the PLRA and the United States Court of Appeals for the Fifth Circuit. (D.E. 70).

jurisdictional limitations of this Court and the Fifth Circuit Court of Appeals related to his untimely filings nor does he correct his illegible trust account statement. He has not shown any defect in the Magistrate Judge's reasoning. His objections are **OVERRULED**.

Having reviewed the findings of fact, conclusions of law, and recommendations set forth in the Magistrate Judge's Memorandum and Recommendation, as well as Plaintiff's Objections, and all other relevant documents in the record, and having made a de novo disposition of the portions of the Magistrate Judge's Memorandum and Recommendation to which objections were specifically directed, the Court **OVERRULES** Plaintiff's Objections and **ADOPTS** as its own the findings and conclusions of the Magistrate Judge. Accordingly, Plaintiff's Application to Proceed IFP on Appeal (D.E. 65) is **DENIED**.

Although this Court certifies that the appeal is not taken in good faith, Plaintiff may challenge this finding by filing a separate motion to proceed IFP on appeal with the Clerk of Court, U.S. Court of Appeals for the Fifth Circuit, within thirty (30) days of this Order. FED. R. APP. P. 24(a)(5).

The cost to file a motion to proceed IFP on appeal with the Fifth Circuit is calculated below, and if Plaintiff moves to proceed on appeal IFP, the prison authorities will be directed to collect the fees as calculated in this Order.


Plaintiff shall pay **\$505.00** for the appellate filing fee in monthly installments to the United States District Court as provided in 28 U.S.C. § 1915(b)(1). The Texas Department of Criminal Justice–Correctional Institutions Division shall deduct 20% of

2 / 3

each deposit made to Plaintiff's inmate trust account and forward payments to the United States District Court on a regular basis provided the account exceeds \$10.00. Plaintiff shall sign all consents and other documents required by the agency having custody of Plaintiff to authorize the necessary withdrawal from Plaintiff's inmate trust account.

If Plaintiff moves to proceed on appeal IFP, the clerk shall mail a copy of this Order to the **Inmate Trust Fund, P.O. Box 629, Huntsville, Texas 77342-0629** and to **TDCJ - Office of the General Counsel, P.O. Box 13084, Capitol Station, Austin, Texas 78711.**

ORDERED this 21st day of October, 2015.


NELVA GONZALES RAMOS
UNITED STATES DISTRICT JUDGE